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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14830 of 2004

Between:

B. Aruna Kumari, W/o. Sreenivasa Rao,

Aged about 29 years,
R/o. Ashok Nagar, Eluru, West Godavari District,
Licencee of M/s. Vijaya Durga Wines,

Near Vasanth Mahal Centre, Main Road, Eluru.

..... PETITIONER

AND

1 The Deputy Commissioner for Prohibition and Excise, Kakinada.
2 The Prohibition and Excise Superintendent,

West Godavari District at Eluru.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate Writ or direction declaring the order of the 2nd respondent passed in Rc.No.1070/2004/A1 dated 16-8-2004 as illegal arbitrary and contrary to the principles of natural justice.

Counsel for the Petitioner:Smt. G.JHANSI

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

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ORDER:

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Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise appearing for the respondents.

The petitioner is holding a retail licence in Form IL-24 for sale of Indian Liquor and Foreign Liquor. This writ petition is filed aggrieved by the order dated 16-08-2004 passed by the Prohibition and Excise Superintendent, West Godavari District, Eluru, where under the license held by the petitioner has been suspended pending enquiry in exercise of powers vested under sub section (1) of Section 31 of A.P.Excise Act, 1968. A perusal of the impugned order dated 16-08-2004 shows that the said order has been passed on the alleged ground that the petitioner has kept open the licensed premises and transacted the business on the Independence Day which is declared as Dry Day under Rule 37-A of the A.P. Indian Liquor and Foreign Liquor Rules, 1970. It is alleged that the Prohibition & Excise Superintendent, Eluru along with Station House Officer and Sub Inspector, Eluru while patrolling on 15-08-2004 observed that the petitioner failed to observe dry day and it was found that the licensed premises was kept open and she was carrying on the business in violation of Rule 37-A of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 which is

punishable under Section 34(a) of A.P. Excise Act, 1968. The main contention raised by the learned counsel for the petitioner is that having regard to the allegation made against the petitioner, the order of suspension pending enquiry is not warranted. The learned counsel for the petitioner contends that it is always open to the respondents to make the necessary enquiry into the alleged offence, but the suspension of the licence pending such enquiry is not at all warranted.

On the other hand, the learned Government Pleader contended that the petitioner by conducting the business on dry day has violated Rule 37-A of the A.P. Indian & Foreign Liquor Rules, 1970 and the same is also in violation of the conditions of licence held by her. It is further contended that under Rule 30 of A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993, (for short, 'the Rules') licence can be suspended without prior notice pending enquiry into the offence committed by the licensee and therefore the impugned order of suspension pending enquiry is in accordance with law and does not warrant any interference.

The law with regard to exercise of power for suspension pending enquiry has been considered by Full Bench of this Court in "TAPPERS CO-OPERATIVE SOCIETY MADDUR v. SUPERINTENDENT OF EXCISE, MAHABOOBNAGAR" where under it was held that the power of suspension pending enquiry cannot be exercised in a routine way or as a matter of course and that the licensing authority is bound to exercise discretion reasonably bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. The Full Bench also observed that if it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity, as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry.

In the case on hand, having regard to the nature of the allegation made against he petitioner, I am of the view that the respondents are not justified in suspending the license of the petitioner pending enquiry. The circumstances do not warrant any such drastic step of suspension pending enquiry into the alleged offence that the petitioner failed to observe the dry day as declared under Rule 37-A of A.P. Indian Liquor and Foreign Liquor Rules, 1970. It is always open to the respondents to conduct the necessary enquiry and pass appropriate orders after

affording due opportunity to the petitioner to rebut the allegation made against her. It is true that Rule 30 of the Rules provides for suspension of the licence without prior notice pending enquiry into an offence committed by the licensee. However, a reading of the said rule shows that such a power can be invoked if the licensing authority is convinced that the lease has been obtained by the licensee by furnishing any false information etc. Since the allegation against the petitioner is that he failed to observe the dry day as mandated under the statutory rules, I am not convinced with the submission of the learned Government Pleader that the power can be traced under Rule 30 of the Rules. As a matter of fact, the impugned order shows that the licence has been suspended pending enquiry in exercise of power under Section 31(1) of A.P. Excise Act, 1968.

For the aforesaid reasons, the impugned order of suspension dated 16-08-2004 cannot be sustained and the same is accordingly set aside, leaving it open to the respondents to conduct the necessary enquiry and pass appropriate orders in accordance with law after affording due opportunity to the petitioner.

Accordingly, the writ petition is allowed. No costs.

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24-08-2004

vs

To

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1 The Deputy Commissioner for Prohibition and Excise Kakinada.
2 The Prohibition and Excise Superintendent,

West Godavari District at Eluru.

3 Two CCs to the G.P for Prohibition and Excise, High Court Buildings, Hyderabad(O.U.T)

4. Two CD copies.

THE HON'BLE MS JUSTICE G.ROHINI

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Dated: 24-08-2004